IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

FRIDAY, THE 29TH JUNE 2007 / 8TH ASHADHA 1929

OP.No. 25968 of 2002(N)

PETITIONER:

C.C. BABU, (NO.S/356903 H ASSAM
RIFLES EX-SERVICEMAN) EX-RFN/EFS,
CHOORAVAYALIL, PANGADA P.O., PAMPADY,
KOTTAYAM DISTRICT, KERALA STATE.

BY ADV. SRI.K.SASIKUMAR
SRI.P.P.SOMARAJAN

RESPONDENTS:

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1. SECRETARY TO GOVERNMENT, MINISTRY
OF HOME AFFAIRS, GOVERNMENT OF INDIA,
NEW DELHI.

2. DIRECTOR GENERAL, DIRECTORATE GENERAL,
ASSAM RIFLES, SHILLONG - 793 011.

BY ADV. SRI.A.SUDHI VASUDEVAN, ADDL.CGSC

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 29/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

EXT.P1-TRUE COPY OF THE MEDICAL BOARD PROCEEDINGS DATED 17.10.1997 OF UNIT HOSPITAL 5 ASSAM RIFLES.

EXT.P2-TRUE COPY OF RELEVANT EXTRACT OF THE DISCHARGE CERTIFICATE OF THE PETITIONER.

EXT.P3-TRUE COPY OF THE REPRESENTATION DATED 23.5.2002 FORWARDED BY THE PETITIONER TO THE 2ND RESPONDENT.

EXT.P4-TRUE COPY OF THE ORDER DATED 26.6.2002 ISSUED BY R2

EXT.P5-TRUE COPY OF THE APPEAL PETITION DATED 11.8.2002 SUBMITTED BY THE PETITIONER BEFORE THE FIRST RESPODNENT.

RESPONDENTS' EXTS:

EXT.R1(A)-TRUE OPY OF MEDICAL PROCEEDINGS DATED 2.8.1995

EXT.R1(B)-TRUE COPY OF PARA 10 OF RECORDS OFFICE INSTRUCTIONS 1/90

EXT.R1(C)-TRUE COPY OF OPINION OF CLASSIFIED SPECIALIST OF 155 BASE HOSPITAL, TEZPUR DT.6.7.99.

// TRUE COPY //

P.S. TO JUDGE

T.R. Ramachandran Nair, J.

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O.P.NO.25968 of 2002-N

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Dated this the 29th day of June, 2007

JUDGMENT

Aggrieved by the rejection of the claim of the petitioner for disability pension, this original petition has been filed. The petitioner was refused the pension as per Ext.P4 on the ground that his disease was not attributable and not aggravated due to the service conditions of Assam Rifles service.

2. The petitioner was enlisted into the service of Assam Rifles on 26.11.1986. The same is a para military service. It is the case of the petitioner that at the time of recruitment, he was subjected to intense medical examination and the authorities were satisfied about this physical and mental fitness and that it was under this medical fitness certificate that the petitioner was enrolled in the service of Assam Rifles.

3. It is the further case of the petitioner that the personnel of Assam Rifles have been mainly performing their duties in the north eastern boundary of the country and they have to resist extremists and insurgents. The deployment of the forces were usually in the sensitive places. The conditions of life there gave high mental tension and physical exertion to the jawans. The border areas are difficult terrains which are inhospitable

with uncongenial climatic conditions. Because of the threat of offensives from the enemies and insurgents and other extremists within the country, jawans were being put to high risk and tension. It is submitted that petitioner was also operating in these areas in such atmosphere and thus gradually developed a psychic disorder.

4. He was subjected to medial treatment in a hospital and on 17.10.1997 a Medical Board considered his case and he was recommended for low medical category as EEE (PSY) for two years. This preliminary Medical Board also suggested for another Medical Board on 8.9.1997. They directed that the petitioner should not be posted to out posts and the principal disability noted was "Psychosis". Ext.P1 is the true copy of the proceedings of the Medical Board. Later on, the final medical board recommended his discharge from service. Thus, he was discharged from service on 31.5.2000 owing to the disability "Psychosis". On that day he had completed 13 years, six months and six days service. Ext.P2 is the discharge certificate. He was allowed only the invalid pension. Even though he filed a representation, Ext.P3 claiming the disability pension, that was rejected by Ext.P4 stating that his disease was not attributable or aggravated due to service conditions of the Assam Rifles Service. Even though he filed an appeal, Ext.P5, nothing materialised and hence the original petition has been filed.

5. According to the petitioner, the view taken by the second respondent in Ext.P4 is not correct and the disease "Psychosis" has been developed due to the highly sensitive service conditions. It is pointed out that his disability was attributable to his tenure in the service. It is also pointed out that he is entitled for pension going by the various provisions of Central Civil Services (Extraordinary Pension) Rules.

6. The respondents have filed a statement and a counter affidavit disputing the claim of the petitioner. The stand taken in them consistently is that the petitioner showed an abnormal behaviour and anxiety for the first time when he reported for duty after his leave during the year 1994. The case of the petitioner was brought under medical attention in August 1994. The steps taken to treat him have been explained in paragraph 6 of the counter affidavit and Ext.R1(a) proceedings of the Medical Board has also been produced. It is pointed out that his case was being reviewed from time to time and treatment was being continued. Ext.R1(c) is the opinion of Classified Specialist (Psychiatry) of 155 Base Hospital, Tezpur. His percentage of disability was fixed at 60% and the Medical Board recommended his case fit to be released in low medical category BEE (Permanent). It is averred in the counter affidavit that a disablement shall be accepted as due to Government service provided that it is certified that it is due to a disease which is attributable to Government service, or existed

before or arose during service and remains aggravated thereby, going by the relevant rules. The disease "Psychosis" for which the petitioner was discharged from service, was neither attributable nor aggravated by the service conditions. This, in short, is the case of the respondents.

7. A reference to the relevant rule is necessary for examining the matter. Rule 3-A(1) (a) is in the following terms:

> "Disablement shall be accepted as due to Government service provided that it is certified that it is due to wound, injury or disease which --
>
> (i) is attributable to Government service, or
>
> (ii) existed before or arose during Government service and has been and remains aggravated thereby."

Sub-rule (2) states that "there shall be a casual connection between -- (a) disablement and Government service; and (b) death and Government service, for attributability or aggravation to be conceded. Guidelines in this regard are given in the Appendix which shall be treated as part and parcel of these rules." The following guidelines are important. Clause (2) reads as follows:

> "2. In deciding on the issue of entitlement, all the evidence (both direct and circumstantial) will be taken into account and the benefit of reasonable doubt will be given to the claimant. This benefit will

be given more liberally to the claimant in field service cases."

Clause 5(b) is also important which is in the following terms:

> "(b). A disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in service if no note of it was made at the time of the individual's acceptance for Government service. However, if medical opinion holds, for reasons to be stated, that the disease could not have been detected on medical examination prior to acceptance for service, the disease will not be deemed to have arisen during service."

Rule 3(4) of the Rules defines 'disease' as "a disease as is mentioned in Schedule I-A hereto annexed." Schedule I-A contains the list and classification of diseases which can be attributed by service and sub heading (B) relates to diseases affected by stress and strain. Item (i) therein is "Psychosis and Psychoneurosis". Thus, the disease attributable to the petitioner is one included in Schedule 1-A.

8. Learned counsel for the petitioner pointed out that the approach made by the respondents is not legally correct. It is attributable only to the stress and strain of the service. Further, it is pointed out that at the time of the recruitment, there was a medical examination and no such mental disease was noted. Therefore, going by clause 5(b), the disease herein will be deemed to have been arisen in service as no note of it was made at the

time of his acceptance in the Government service. Further, it is pointed out that merely because of the fact that it was noticed while he was on leave in 1994, it cannot be said that it is not one attributable to the service in the Assam Rifles as the leave period is also part of the service. He was enrolled in the year 1986 and it was attributed after eight years of service and therefore the counsel submits that no other conclusion is possible. Hence, he is entitled to be granted the disability pension.

9. This argument is stoutly opposed by learned Standing Counsel appearing for the respondents. Relying upon the documents Excts.R1(a) to R1(c), it is pointed out that the opinion of the Medical Board that it is not attributable to the conditions of service, is correct and that the claim for disability pension is therefore not sustainable.

10. Ext.R1(a) is the proceedings of the Medical Board. The principal disability is noted as “Psychosis” and the date and place of origin is August 1994. It is evident from the proceedings that upto August 1994 no such disease had been noticed. Merely because of the fact that it was noticed while he was on leave, it cannot be stated that it was not attributable to the conditions of service. In Ext.R1(a) in column No.14, the date and place of origin is noted as August 1994. The details of the treatment are also given in Ext.R1(a). In Parts 1 and 2, various columns are given showing the opinion of the medical board on various aspects. In part 2 column 2 there

is a question that; was it contracted in circumstances over which he had no control? The answer is noted as 'Yes'. They have recorded in column 4 the statement of the patient that he contracted the disease at home while on leave. Obviously no details are given as to whether it was contracted due to the stress and strain in the service. Merely because the disease was noted while on leave, it cannot be conclusively stated that it was not due to the stress and strain of the service conditions, on an examination of the guidelines appended to the rules.

11. One more aspect is that the rules and guidelines have to be interpreted liberally. Clause (2) states that in deciding on the issue of entitlement, all the evidence (both direct and circumstantial) will be taken into account and the benefit of reasonable doubt will be given to the claimant. In part 2 column 2 of Ext.R1(a) it is clearly stated that the disease was contracted in circumstances over which he had no control. Therefore, there cannot be any dispute that the decease was contracted while he was in service. Admittedly going by rule 5(b) of Appendix 3, a disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in service if no note of it was made at the time of the individual's acceptance for Government service. The respondents have no case that at the time of acceptance of the petitioner in the service, any note was made of the disease. There is no case that the disease could not have

been detected on medical examination prior to the acceptance for Government service. No such opinion of the Medical Board is recorded in Exts.R1(a) to R1(c). Therefore, herein by the operation of the said deeming clause it is clear that the disease which led to the petitioner's discharge is one which will be deemed to have arisen in service as no note of it was made at the time of his acceptance in service. The effect of a legal fiction is well settled. When a legal fiction is imported, a state of things is said to exist because of the deeming provision. It is well settled that a deeming provision is an admission of the non-existence of the fact deemed. The said principles are settled by various decisions of the Apex Court. Reference in this context is apposite on the decision of the Supreme Court in **M/s. J.K. Cotton Spinning and Weaving Mills Ltd. And another v. Union of India and others** (AIR 1988 SC 191). While interpreting a deeming clause, their Lordships held in paragraph 40 as follows:

> "It is well settled that a deeming provision is an admission of the non-existence of the fact deemed. Therefore, in view of the deeming provisions under Explanations to Rules 9 and 49, although the goods which are produced or manufactured at an intermediate stage and, thereafter, consumed or utilised in the integrated process for the manufacture of another commodity is not actually removed shall be construed and regarded as removed. The Legislature is quite competent to enact a deeming prov ion for the purpose of assuming the existence of a fact which does not really exist."

This principle has been reiterated in the decision of the Apex Court reported in **M. Venugopal v. The Divisional Manager, L.I.C. Of India,**

Machilipatnam (AIR 1994 SC 1343). Their Lordships held in paragraph 11 as follows:

> " The effect of a deeming clause is wellknown, Legislature can introduce a statutory fiction and courts have to proceed on the assumption that such state of affairs exists on the relevant date. In this connection, one is often reminded of what was said by Lord Asquith in the case of **East End Dwelling Co. Ltd. v. Finsbury Borough Council,** ((1952) AC 109 (B)), that when one is bidden to treat an imaginary state of affairs as real, he must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, inevitably have flowed from -- one must not permit his "imagination to boggle" when it comes to the inevitable corollaries of that state of affairs."

Further, it is settled law that "full effect must be given to the statutory fiction and it should be carried to its logical conclusion." Hence, in the light of the above principles, the case of the petitioner is squarely covered by the deeming provisions contained in clause 5(b) of the guidelines contained in Rule 3-A(2). Therefore, the stand of the respondents that the disease had not arisen during his tenure in service, is not correct. It can be attributable only due to the service conditions in Assam Rifles.

12. Learned counsel for the petitioner relied upon the principles stated by a Division Bench of this court in **Union of India v. Alex Varghese (**1998(2) KLT 891) and that of a learned single judge in **Vijoy v. Director General, B.S.F.** (2005 (4) KLT 919) in support of his contentions. Their Lordships of the Division Bench held in a similar case thus:

> " This is a case where the respondent was recruited and enrolled

> after finding him physically and mentally fit and while in service, after so many years of service, he contracted the illness leading to the disability. Ext.P3 certificate states that the incapacity did not appear to have been caused by regular or intemperate habits. Therefore, no extraneous cause can be shown for the respondent having contracted the disease at a later stage. The appellants have not affirmatively established the disease is not attributable or has not been aggravated by it. The burden of establishing it lies on the appellants. When the appellants have miserably failed to establish that the disability is not attributable to Government service, they are bound to pay the disability pension as per the schedule to the Pension Rules."

13. The facts of this case is also similar to the above case. Petitioner was enrolled obviously after finding him physically and mentally fit. He contracted the disease after 8 years of service. No extraneous cause other than that is attributable to service has been shown by the respondents as one leading to his disease. Apart from merely stating that it was contracted while on leave, it has not been affirmatively established that the disease is not attributable or has not been aggravated by his service in Assam Rifles. That he was under medical examination for a long period by the respondents is also to be taken note of. The above facts will show that the burden is heavily on the respondents to show the same.

14. Similarly, in 2005 (4) KLT 919 while interpreting Rules 3(4), 3A and 9 of the C.C.S. (Extraordinary Pension) Rules, a learned Single Judge of this court held as follows:

> " The Guidelines as extracted above regarding the attributability of disablement to Government service would show the object behind

> the Scheme for disability pension. It is clearly stated therein that the benefit of reasonable doubt shall always be given to the claimant and the benefit has to be given more liberally to a claimant in field service cases. True, if a literal interpretation is given to the Rules, the disability should be in respect of a disease included in the Schedule only. The question is, does it serve the purpose of the Rules. The Court has to administer justice, of course, justice according to law. But the court has a duty also to see whether the law is according to justice. Lex injusta non est lex is a celebrated Latin maxim which mans that an unjust law is not law. In other words, laws should be just and they should serve the cause of justice. In interpreting laws the Court should find out the soul and spirit of law and not mechanically apply the letter of law. After all, law is for man and that the man in need should be the subject and object of the law."

It is evident that the petitioner has been working in areas where the duty normally results in strain and stress. The said aspect is not disputed in the counter affidavit. The petitioner has given in detail in paragraphs 2 and 3 of the original petition the details and the nature of duties and the conditions of life in Assam Rifles. The border areas are highly sensitive and they are inhospitable places with uncongenial climatic conditions. The personnel always have to face threat and offensives from the enemies, insurgents and other extremists. The duties were of high risk and causing tension to the jawans. The petitioner has clearly stated that he was also operating in this high risky and sensitive areas in the same uncongenial climatic conditions. These averments have not been disputed in the counter affidavit. Therefore, judged in the light of the above circumstances also, it cannot be said that the disease was not attributable to the service and not aggravated

due to the service conditions of Assam Rifles service. None of the above aspects have been considered in Ext.P4. It is not a reasoned order also and it is vitiated by total non application of mind also. The proceedings of the Medical Board cannot therefore be conclusive. The situation had to be assessed in the light of the clauses contained in the guidelines and Appendix 3. The authority has not considered the fact that the benefit of reasonable doubt had to be given to the claimant. They have also not considered the fact that when he entered service, no note of the disease was made and therefore the disease which led to his discharge will ordinarily be deemed to have arisen in the service. The Medical Board had no opinion also that the disease could not have been detected on medical examination prior to acceptance for service. For all these reasons, Ext.P4 is liable to be quashed and I do so.

15. Further, there is one more aspect to be noticed herein. It cannot be comprehended that a disease like 'Psychosis' would have been contracted in this State while he was on leave, whereas his tenure in the service was in the border areas of Assam. Therefore, the only conclusion that can be drawn reasonably is that it is attributable to the service itself. Further, even while on leave he is in the service and for that reason also he is entitled for the benefit. Going by the provisions of clause (2) of the guidelines, benefit of reasonable doubt also will have to be given to the claimant and that the

circumstances should have been taken into account. Since it is a beneficial provision, it has to be interpreted liberally to give it a wider meaning rather than a restrictive meaning which would negate the very object of the provision.

Therefore, it is declared that the petitioner is entitled for the disability pension and the respondents are hereby directed to sanction the same in accordance with the rates provided in the rules and relevant orders with arrears, within a period of five months from the date of receipt of a copy of this judgment.

(T.R. Ramachandran Nair, Judge.)

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T.R. Ramachandran Nair, J.

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O.P.NO.25968 of 2002-N

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JUDGMENT

28th day of June, 2007